

AMENDED IN SENATE JULY 1, 2014

AMENDED IN SENATE JUNE 3, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1584

**Introduced by Assembly Member Buchanan
(Principal coauthor: Assembly Member Chau)**

February 3, 2014

An act to add Section 49073.1 to the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1584, as amended, Buchanan. Pupil records: privacy: ~~third-party~~ *3rd-party* contracts: digital storage services and digital educational software.

Existing law prohibits a school district from permitting access to pupil records to any person without parental consent or without a judicial order, except to specified persons under certain circumstances, including to a contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant.

This bill would authorize a local educational agency, as defined, to enter into a contract with a ~~third~~ *3rd* party, as defined, to provide services for the digital storage, management, and retrieval of pupil records, as defined, or to provide digital educational software, or both.

The bill would require the contract to include specified provisions, including a statement that the pupil records continue to be the property of and under the control of the local educational agency, a description of the actions the ~~third~~ 3rd party will take to ensure the security *and confidentiality* of the pupil records, and a description of how the local educational agency and the ~~third~~ 3rd party will jointly ensure compliance with specified federal privacy acts. *The bill would require that a contract that fails to comply with the requirements of this bill be rendered void if certain conditions are satisfied.*

The bill would provide that, if these provisions are in conflict with the terms of a contract in effect before January 1, 2015, the provisions shall not apply to the local educational agency or the ~~third~~ 3rd party subject to that agreement until the expiration, amendment, or renewal of the agreement.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 49073.1 is added to the Education Code,
- 2 to read:
- 3 49073.1. (a) A local educational agency may enter into a
- 4 contract with a third party for either or both of the following
- 5 purposes:
- 6 (1) To provide services, including cloud-based services, for the
- 7 digital storage, management, and retrieval of pupil records.
- 8 (2) To provide digital educational software that authorizes a
- 9 third-party provider of digital educational software to access and
- 10 acquire pupil records.
- 11 (b) A local educational agency that enters into a contract with
- 12 a third party for purposes of subdivision (a) shall ensure the
- 13 contract contains all of the following:
- 14 (1) A statement that pupil records continue to be the property
- 15 of and under the control of the local educational agency. *For*
- 16 *purposes of this paragraph, "pupil records" does not include*
- 17 *pupil-generated content.*
- 18 (2) *A description of the means by which pupils may retain*
- 19 *possession and control of their own pupil-generated content, if*
- 20 *any.*

1 ~~(2) A prohibition against the third party using personally~~
2 ~~identifiable information in individual pupil records for commercial~~
3 ~~or advertising purposes.~~

4 (3) A prohibition against the third party using any information
5 in the pupil record for any purpose other than for the requirements
6 of the contract.

7 (4) A description of the procedures by which a parent, legal
8 guardian, or eligible pupil may review the pupil's records and
9 correct erroneous information.

10 (5) A description of the actions the third party will take,
11 including the designation and training of responsible individuals,
12 to ensure the security *and confidentiality* of pupil records.
13 Compliance with this requirement shall not, in itself, absolve the
14 third party of liability in the event of an unauthorized disclosure
15 of pupil records.

16 (6) A description of the procedures for notifying the affected
17 parent, legal guardian, and eligible pupil in the event of an
18 unauthorized disclosure of the pupil's records.

19 (7) A certification that a pupil's records shall not be retained or
20 available to the third party upon completion of the terms of the
21 contract and a description of how that certification will be enforced.

22 (8) A description of how the local educational agency and the
23 third party will jointly ensure compliance with the federal Family
24 Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and
25 the federal Children's Online Privacy Protection Act of 1998 (15
26 U.S.C. Sec. 6501 et seq.) for all pupils, including pupils who are
27 more than 13 years of age.

28 ~~(9) A contract that fails to comply with the requirements of this~~
29 ~~subdivision shall be voidable and all pupil records in possession~~
30 ~~of the third party shall be returned to the local educational agency.~~

31 *(c) In addition to any other penalties, a contract that fails to*
32 *comply with the requirements of this section shall be rendered*
33 *void if, upon notice and a reasonable opportunity to cure, the*
34 *noncompliant party fails to come into immediate compliance and*
35 *cure any defect. Written notice of noncompliance may be provided*
36 *by any party or intended beneficiary of the contract. All parties*
37 *subject to a contract voided under this subdivision shall*
38 *immediately return all pupil records in their possession to the*
39 *local educational agency.*

40 ~~(e)~~

(d) For purposes of this section, the following terms have the following meanings:

(1) “Deidentified information” means information that cannot be used to identify an individual pupil.

~~(1)~~

(2) “Eligible pupil” means a pupil who has reached 18 years of age.

~~(2)~~

(3) “Local educational agency” includes school districts, county offices of education, and charter schools.

~~(3) “Personally identifiable information” means information that may be used on its own or with other information to identify an individual pupil.~~

(4) “Pupil-generated content” means materials created by a pupil, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, and photographs.

~~(4)~~

(5) (A) “Pupil records” means both of the following:

(i) Any information directly related to a pupil that is maintained by the local educational agency.

(ii) Any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational agency employee.

~~(B) “Pupil records” do not include records of teachers and school administrators that are kept in their sole possession and not revealed to any other individual except a substitute teacher.~~

(B) “Pupil records” does not mean any of the following:

(i) Deidentified information, including aggregated deidentified information, used by the third party to improve educational products for adaptive learning purposes and for customizing pupil learning.

(ii) Deidentified information, including aggregated deidentified information, used to demonstrate the effectiveness of the operator’s products in the marketing of those products.

(iii) Deidentified information, including aggregated deidentified information, used for the development and improvement of educational sites, services, or applications.

~~(5)~~

1 (6) “Third party” refers to a provider of digital educational
2 software or services, including cloud-based services, for the digital
3 storage, management, and retrieval of pupil records.

4 ~~(d)~~

5 (e) If the provisions of this section are in conflict with the terms
6 of a contract in effect before January 1, 2015, the provisions of
7 this section shall not apply to the local educational agency or the
8 third party subject to that agreement until the expiration,
9 amendment, or renewal of the agreement.